

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2189**

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**Introduced by Assembly Member Blakeslee**

February 22, 2006

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An act to amend Section 399.12 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL’S DIGEST

AB 2189, as amended, Blakeslee. Energy: renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires each electrical corporation to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year over its baseline amount so that 20% of its retail sales are procured from eligible

renewable energy resources no later than December 31, 2017. Pursuant to the existing definition of an “eligible renewable energy resource,” the electricity generated by a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of January 1, 2003, is eligible only for purposes of establishing the baseline of renewable energy resources procured by the electrical corporation and not for purposes of meeting the renewables portfolio standard.

This bill would make the incremental amount of electricity generated by an existing small hydroelectric generation facility resulting from efficiency improvements at the facility undertaken after January 1, 2003, eligible to meet the renewables portfolio standard. The bill would provide that a small hydroelectric generation facility that is an eligible renewable energy resource ~~retain~~ *retains* eligibility if, as a result of efficiency improvements at the facility undertaken after January 1, 2003, the ~~peak~~ generating capacity of the facility exceeds 30 megawatts. *The bill would provide that the incremental increase in the amount of electricity generated from an existing hydroelectric generation facility, regardless of size, that results from efficiency improvements for which there is no new or increased appropriation or diversion of water, is electricity from an “eligible renewable energy resource.” The bill would provide that an existing conduit hydroelectric facility, as defined, of 30 megawatts or less is eligible for purposes of establishing a retail seller’s baseline quantity of eligible renewable energy resources and that a new conduit hydroelectric facility of 30 megawatts or less is an “eligible renewable energy resource” if it does not require a new or increased appropriation or diversion of water pursuant to a specified law.* The bill would make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 399.12 of the Public Utilities Code is
- 2 amended to read:
- 3 399.12. For purposes of this article, the following terms have
- 4 the following meanings:
- 5 (a) “Eligible renewable energy resource” means an electric
- 6 generating facility that meets the definition of “in-state

renewable electricity generation facility” in Section 25741 of the Public Resources Code, subject to the following conditions *or exceptions*:

(1) A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller’s baseline quantity of eligible renewable energy resources except for electricity certified as incremental geothermal production by the Energy Commission, if the incremental electricity was not sold to an electrical corporation under contract entered into prior to September 26, 1996. For each facility seeking certification, the Energy Commission shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining geothermal output of existing steamfields and the contribution of capital investments in the facility or wellfield.

~~(2) The electricity generated by an existing~~ (A) A small hydroelectric generation facility of 30 megawatts or less ~~peak~~ generating capacity that is procured or owned by a retail seller as of January 1, 2003, shall be eligible for purposes of ~~establishing~~ *generating electricity that contributes to* the baseline of the retail seller pursuant to this article. ~~The incremental amount of electricity generated by an existing small hydroelectric generation facility resulting from efficiency improvements at the facility undertaken after January 1, 2003, is eligible to meet the renewables portfolio standard.~~ A small hydroelectric generation facility that is an eligible renewable energy resource shall retain eligibility if, as a result of efficiency improvements at the facility undertaken after January 1, 2003, the ~~peak~~ generating capacity of the facility exceeds 30 megawatts. ~~A~~

(B) A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(C) *The incremental increase in the amount of electricity generated from an existing hydroelectric generation facility, regardless of size, that results from efficiency improvements for which there is no new or increased appropriation or diversion of water, is electricity from an “eligible renewable energy*

1 resource,” and shall be eligible for purposes of meeting the  
2 procurement requirements of this article.

3 (D) Notwithstanding subparagraph (A), an existing conduit  
4 hydroelectric facility of 30 megawatts or less, as defined by  
5 Section 823a of Title 16 of the United States Code, shall be  
6 eligible for the purposes of establishing a retail seller’s baseline  
7 quantity of eligible renewable energy resources. A new conduit  
8 hydroelectric facility of 30 megawatts or less, as defined by  
9 Section 823a of Title 16 of the United States Code, shall be an  
10 eligible renewable energy resource if it does not require a new or  
11 increased appropriation or diversion of water under Part 2  
12 (commencing with Section 1200) of Division 2 of the Water  
13 Code.

14 (3) A facility engaged in the combustion of municipal solid  
15 waste shall not be considered an eligible renewable resource  
16 unless it is located in Stanislaus County and was operational  
17 prior to September 26, 1996. Electricity generated by a facility  
18 meeting these requirements shall be eligible only for the purpose  
19 of adjusting a retail seller’s baseline quantity of eligible  
20 renewable energy resources.

21 (b) “Energy Commission” means the State Energy Resources  
22 Conservation and Development Commission.

23 (c) “Retail seller” means an entity engaged in the retail sale of  
24 electricity to end-use customers, including any of the following:

25 (1) An electrical corporation, as defined in Section 218.

26 (2) A community choice aggregator. The commission shall  
27 institute a rulemaking to determine the manner in which a  
28 community choice aggregator will participate in the renewables  
29 portfolio standard subject to the same terms and conditions  
30 applicable to an electrical corporation.

31 (3) An electric service provider, as defined in Section 218.3  
32 subject to the following conditions:

33 (A) An electric service provider shall be considered a retail  
34 seller under this article for sales to any customer acquiring  
35 service after January 1, 2003.

36 (B) An electric service provider shall be considered a retail  
37 seller under this article for sales to all its customers beginning on  
38 the earlier of January 1, 2006, or the date on which a contract  
39 between an electric service provider and a retail customer  
40 expires. Nothing in this subdivision may require an electric

1 service provider to disclose the terms of the contract to the  
2 commission.

3 (C) The commission shall institute a rulemaking to determine  
4 the manner in which electric service providers will participate in  
5 the renewables portfolio standard program. The electric service  
6 provider shall be subject to the same terms and conditions  
7 applicable to an electrical corporation pursuant to this article.  
8 Nothing in this paragraph shall impair a contract entered into  
9 between an electric service provider and a retail customer prior to  
10 the suspension of direct access by the commission pursuant to  
11 Section 80110 of the Water Code.

12 (4) “Retail seller” does not include any of the following:

13 (A) A corporation or person employing cogeneration  
14 technology or producing electricity consistent with subdivision  
15 (b) of Section 218.

16 (B) The Department of Water Resources acting in its capacity  
17 pursuant to Division 27 (commencing with Section 80000) of the  
18 Water Code.

19 (C) A local publicly owned electric utility as defined in  
20 subdivision (d) of Section 9604.

21 (d) “Renewables portfolio standard” means the specified  
22 percentage of electricity generated by eligible renewable energy  
23 resources that a retail seller is required to procure pursuant to this  
24 article.